

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

FERNANDO PERALTA NUNEZ

6509 Painter Avenue

Whittier, CA 90601

Civil Engineer License No. C 16581

Geotechnical Engineer License No. GE 649,

Respondent.

Case No. 839-A

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on October 14, 2011.

IT IS SO ORDERED September 8, 2011.

original signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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Attorneys for Complainant

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
9 **GEOLOGISTS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **FERNANDO PERALTA NUNEZ**
13 **6509 Painter Avenue**
14 **Whittier, CA 90601**
15 **Civil Engineer License No. C 16581**
16 **Geotechnical Engineer License No. GE 649**

Respondent.

Case No. 839-A

OAH No. 2010010948

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Richard B. Moore, PLS (Complainant) is the Executive Officer of the Board for
21 Professional Engineers, Land Surveyors, and Geologists (Board). He brought this action solely in
22 his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of
23 the State of California, by Rene Judkiewicz, Deputy Attorney General.

24 2. Fernando Peralta Nunez (Respondent) is representing himself in this proceeding and
25 has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 18, 1966, the Board issued Civil Engineer License No. C 16581
27 to Respondent. The Civil Engineer License was in full force and effect at all times relevant to the
28 charges brought in Accusation No. 839-A and will expire on June 30, 2013, unless renewed.

4. On or about September 9, 1987, the Board issued Geotechnical Engineer License No. GE 649 to Respondent. The Geotechnical Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 839-A and will expire on June 30, 2013, unless renewed.

JURISDICTION

5. Accusation No. 839-A was filed before the Board, Department of Consumer Affairs, and the Accusation and all other statutorily required documents were properly served on Respondent on June 3, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. His Notice of Defense listed attorney Jay Oberholtzer as his counsel in this matter. However, in a letter dated January 14, 2011, Mr. Oberholtzer confirmed that he has never represented Respondent in this matter. The operational pleading currently pending against Respondent, the Second Amended Accusation, was served on Respondent on July 18, 2011. A copy of Second Amended Accusation No. 839-A is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Second Amended Accusation No. 839-A. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Civil Engineer and Geotechnical Licenses without further process.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 16581 and Geotechnical Engineer License No. GE 649, issued to Respondent Fernando Peralta Nunez, are surrendered and accepted by the Board for Professional Engineers, Land Surveyors, and Geologists.

15. The surrender of Respondent's Civil Engineer License and Geotechnical Engineer License, and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

16. Respondent shall lose all rights and privileges as a Civil Engineer and Geotechnical Engineer in California as of the effective date of the Board's Decision and Order.

17. Respondent shall cause to be delivered to the Board his pocket licenses, and, if one was issued, his wall certificates on or before the effective date of the Decision and Order.

18. Respondent agrees not to petition for reinstatement of the surrendered licenses. Respondent agrees not to apply for any license issued by the Board for three years from the effective date of this surrender. Respondent understands and agrees that if he ever applies for any license issued by the Board, the Board shall treat it as a new application for licensure.

Respondent must comply with all the laws, regulations, and procedures for licensure in effect at the time the application is filed, including but not limited to submitting a completed application and the requisite fee and taking and passing the required examination(s), and all of the charges and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by Respondent when the licensing agency determines whether to grant or deny the application.

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DATED:

8/9/11

Original Signed

ENDORSEMENT

Dated:

8/9/11

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

Original Signed

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Exhibit A

Second Amended Accusation No. 839-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN CHAPPELLE
Supervising Deputy Attorney General
3 RENE JUDKIEWICZ
Deputy Attorney General
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7 Attorneys for Complainant

8
9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
10 **GEOLOGISTS**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 839-A

13 **FERNANDO PERALTA NUNEZ**
14 **6509 Painter Avenue**
15 **Whittier, CA 90601**

SECOND AMENDED ACCUSATION

16 **Civil Engineer License No. C 16581**
17 **Geotechnical Engineer License No. GE 649**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Richard B. Moore, PLS (Complainant), brings this Accusation solely in his official
23 capacity as the Executive Officer of the Board for Professional Engineers, Land Surveyors, and
24 Geologists (Board), Department of Consumer Affairs.

25 2. On or about August 18, 1966, the Board issued Civil Engineer License Number
26 C 16581 to Fernando Peralta Nunez (Respondent). The Civil Engineer License was in full force
27 and effect at all times relevant to the charges brought herein and will expire on June 30, 2013,
28 unless renewed.

3. On or about September 9, 1987, the Board for Professional Engineers, Land Surveyors, and Geologists issued Geotechnical Engineer License Number GE 649 to Fernando Peralta Nunez (Respondent). The Geotechnical Engineer License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION AND STATUTORY PROVISIONS

4. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Code section 6749, subdivision (a) provides, in part, as follows:

“(a) A professional engineer shall use a written contract when contracting to provide professional engineering services to a client pursuant to this chapter. The written contract shall be executed by the professional engineer and the client, or his or her representative, prior to the professional engineer commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following:

• • • •

“(3) The name, address, and license or certificate number of the professional engineer, and the name and address of the client.

“(4) A description of the procedure that the professional engineer and the client will use to accommodate additional services.

“(5) A description of the procedure to be used by any party to terminate the contract.”

7. Section 6775 of the Code states, in pertinent part:

“[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

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2 “(c) Who has been found guilty by the board of negligence or incompetence in his or her
3 practice.

4 “(d) Who has been found guilty by the board of any breach or violation of a contract to
5 provide professional engineering services.

6

7 “(h) Who violates any provision of this chapter.”

8 8. Code section 8731 states:

9 “A registered civil engineer and a civil engineer exempt from registration under Chapter 7
10 (commencing with Section 6700) of Division 3 are exempt from licensing under this chapter and
11 may engage in the practice of land surveying with the same rights and privileges, and the same
12 duties and responsibilities of a licensed land surveyor, provided that for civil engineers who
13 become registered after January 1, 1982, they shall pass the second division examination provided
14 for in Section 8741 and obtain a land surveyor's license, before practicing land surveying as
15 defined in this chapter.”

16 9. Code section 8759, subdivision (a) provides, in part, as follows:

17 “(a) A licensed land surveyor or registered civil engineer authorized to practice land
18 surveying shall use a written contract when contracting to provide professional services to a client
19 pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or
20 registered civil engineer and the client, or his or her representative, prior to the licensed land
21 surveyor or registered civil engineer commencing work, unless the client knowingly states in
22 writing that work may be commenced before the contract is executed. The written contract shall
23 include, but not be limited to, all of the following:

24

25 “(3) The name, address, and license or certificate number of the licensed land surveyor or
26 registered civil engineer, and the name and address of the client.

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28 “(5) A description of the procedure to be used by any party to terminate the contract.”

1 10. Code section 8762, subdivision (c) provides as follows:

2 "The record of survey required to be filed pursuant to this section shall be filed within 90
3 days after the setting of boundary monuments during the performance of a field survey or within
4 90 days after completion of a field survey, whichever occurs first."

5 11. Code section 8767 provides as follows:

6 "If the county surveyor finds that the record of survey complies with the examination in
7 Section 8766, the county surveyor shall endorse a statement on it of his or her examination, and
8 shall present it to the county recorder for filing. Otherwise the county surveyor shall return it to
9 the person who presented it, together with a written statement of the changes necessary to make it
10 conform to the requirements of Section 8766. The licensed land surveyor or registered civil
11 engineer submitting the record of survey may then make the agreed changes and note those
12 matters which cannot be agreed upon in accordance with the provisions of Section 8768 and shall
13 resubmit the record of survey within 60 days, or within the time as may be mutually agreed upon
14 by the licensed surveyor or registered engineer and the county surveyor, to the county surveyor
15 for filing pursuant to Section 8768."

16 12. Code section 8773.2, subdivision (b) provides as follows:

17 "(b) In the event the submitted 'corner record' fails to comply with the examination criteria
18 of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it
19 together with a written statement of the changes necessary to make it conform to the requirements
20 of subdivision (a). The licensed land surveyor or licensed civil engineer submitting the corner
21 record may then make the agreed changes in compliance with subdivision (a) and note those
22 matters that cannot be agreed upon in accordance with the provisions of subdivision (c), and shall
23 resubmit the corner record within 60 days, or within the time as may be mutually agreed upon by
24 the licensed land surveyor or licensed civil engineer and the county surveyor, to the county
25 surveyor for filing pursuant to subdivision (c). The county surveyor or engineer shall file the
26 corner record within 10 working days after receipt of the resubmission."

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13. Code section 8780 provides, in pertinent part, as follows:

“The board may receive and investigate complaints against licensed land surveyors and registered civil engineers, and make findings thereon. By a majority vote, the board may reprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor or registered civil engineer, respectively, licensed under this chapter or registered under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to be guilty of:

• • • •

“(b) Any negligence or incompetence in his or her practice of land surveying.

• • • •

“(d) Any violation of any provision of this chapter or of any other law relating to or involving the practice of land surveying.

• • • •

“(g) A breach or violation of a contract to provide land surveying services.

“(h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.”

REGULATIONS

14. California Code of Regulations, title 16, section 404, provides, in pertinent part:

• • • •

“(u) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, ‘incompetence’ as used in Sections 6775 and 8780 of the Code is defined as the lack of knowledge or ability in discharging professional obligations as a professional engineer or land surveyor.

• • • •

“(dd) For the sole purpose of investigating complaints and making findings thereon under Sections 6775 and 8780 of the Code, ‘negligence’ as used in Sections 6775 and 8780 of the Code is defined as the failure of a licensee, in the practice of professional engineering or land surveying, to use the care ordinarily exercised in like cases by duly licensed professional engineers and land surveyors in good standing.”

1 15. California Code of Regulations, title 16, section 464, provides, in pertinent part:

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3 “(c) The corner record shall be filed within 90 days from the date a corner was found, set,
4 reset, or used as control in any survey. The provisions for extending the time limit shall be the
5 same as provided for a record of survey in Section 8762 of the Code.”

6 COST RECOVERY

7 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 AHAMED PROPERTY – RANCHO PALOS VERDES

12 17. Respondent was hired to prepare a soils report and a grading plan for a single family
13 residence to be built for Mr. Sultan Ahamed, located at 6270 Ocean Terrace, in Rancho Palos
14 Verdes, California. On or about December 17, 1998, Nunez Engineering prepared a topographic
15 survey map for the Ahamed project. This topographic map shows the patio/house setback to be
16 20 feet from the southerly property line. This original topographic map was in error regarding the
17 southerly setback.

18 18. A second similar topographic map showing the same data and still containing the
19 Nunez Engineering title block was submitted to the City of Rancho Palos Verdes (City), with
20 added details, notations, notes and computations. This second map shows the proposed
21 house/patio setback located 20 feet from the southerly trail easement and not the property line.
22 This second survey map indicates it was prepared by David Li. In October, 1999, the City issued
23 a building permit based upon the second topographic survey map.

24 19. The site contractor for the home was Elite Homes. Respondent was requested by the
25 contractor to come to the site and stake the location of the house so construction could begin.
26 Respondent staked the building location based on his original topographic survey map and did not
27 know changes had been made to the site drawing. Respondent did not use the permitted plans for
28 his staking work. On or about November 11, 1999, Respondent certified by seal and signature

1 that he "surveyed" the location of the pertinent features at the building site and found the setbacks
2 in conformance with the City approved plans.

3 20. In fact, the site construction did not conform to the approved permitted plans and the
4 residence was constructed in the wrong location. Variations from the approved plans included
5 grading that extended onto adjacent properties, the structure was placed inside of the building
6 setback limits, and the rear deck extended into a restricted building zone. The City would not
7 issue a Certificate of Occupancy to allow the owner use of the premises until the grading and
8 setback discrepancies were remedied.

9 FIRST CAUSE FOR DISCIPLINE

10 (Incompetence and/or Negligence)

11 21. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
12 the Code in that Respondent failed to use the care ordinarily exercised in like cases by a duly
13 licensed professional engineer, or in the alternative, lacked the requisite knowledge and skill to
14 discharge his duties. The circumstances are as follows:

15 a) Respondent improperly and inaccurately performed measuring and staking work on
16 the Ahamed Project, as more fully set forth in paragraphs 17 through 20, above, upon which
17 others relied and were damaged.

18 EDWARDS PROJECT – MONTECITO DRIVE

19 22. On or about April 10, 2002, Audrey Edwards entered into a contract with Respondent
20 for a "Soils and Geological Investigation" for a proposed two-story residence, located on a
21 sloping site at 7171 Montecito Drive in Los Angeles, California. The total contract cost was
22 \$2,800.00 and Ms. Edwards paid a retainer of \$1,400.00 to Respondent to begin work on the
23 project.

24 23. On or about September 19, 2002, Respondent provided Ms. Edwards, outside of the
25 contract terms, with a plot plan and three cross sections for the Montecito drive property.
26 Respondent did not, however, provide Ms. Edwards with the soils report that was the basis of the
27 contract.

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24. On or about November 5, 2002, Respondent provided a new plot plan and three cross sections for the site. The soils report was not provided.

25. On or about February 13, 2003, Ms. Edwards hired Quartech Consultants, Inc. to provide the soils and geological report. Quartech finished the work in a timely manner and was paid in full by March 7, 2003.

26. Ms. Edwards sent Respondent a letter dated February 21, 2003, terminating his contract and demanding repayment of the \$1,400.00 retainer fee. Ms. Edwards received a total refund of \$1,000.00.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

27. Respondent is subject to disciplinary action under section 6775, subdivision (c), of the Code in that Respondent was incompetent and lacked the requisite knowledge and skill to discharge his duties. The circumstances are as follows:

a) Respondent failed to complete and provide the soils and geological report within a reasonably professional time as more fully set forth in paragraphs 22 to 26, above.

THIRD CAUSE FOR DISCIPLINE

(Breach and/or Violation of Contract)

28. Respondent is subject to disciplinary action under section 6775, subdivision (d), of the Code in that Respondent was in breach and/or violation of the contract to provide professional engineering services for the Montecito Project due to his nonperformance and abandonment of the work as more fully set forth in paragraphs 22 to 26, above.

FOURTH CAUSE FOR DISCIPLINE

(Violations of Provisions of Act)

29. Respondent is subject to disciplinary action under section 6775, subdivision (h), in that he violated provisions of the Professional Engineers Act (§§ 6700 et seq.) and laws relating to the practice of professional engineering. The circumstances are as follows:

a) Section 6749, subdivision (a)(3): Respondent failed to include his license number on the contact with Ms. Edwards.

1 b) Section 6749, subdivision (a)(5): Respondent's contract with Ms. Edwards failed to
2 describe the procedure for any party to terminate the contract.

3 VERDUZCO PROJECT – LA HABRA

4 30. In 2005, Respondent contracted with Gavino and Darlene Verduzco to perform a
5 boundary survey to mark the corners of the lot and to show the easements on the survey map for a
6 property located at 1050 Russell Street, in La Habra, California.

7 31. On or about August 18, 2003, the Orange County Public Facilities and Resources
8 Department (Surveyor's Office) received a Corner Record on the La Habra property prepared by
9 Respondent.

10 32. In a letter dated September 8, 2003, the Surveyor's Office returned the Corner Record
11 to Respondent indicating that, unless sufficient additional monumentation could be found and
12 made a part of the record, a more complex Record of Survey may be required. Respondent
13 ignored this letter and failed to resubmit a correct Corner Record or a Record of Survey for the La
14 Habra property.

15 33. Respondent failed to file a Corner Record pursuant to the contract with the Veduzcos.

16 FIFTH CAUSE FOR DISCIPLINE

17 (Violations of Provisions of Act)

18 34. Respondent is subject to disciplinary action under section 8780, subdivision (d), in
19 that he violated provisions of the Land Surveyors' Act (§ 8700 et seq.) and laws relating to the
20 practice of land surveying. The circumstances are as follows:

21 a) Sections 8767 and 8773.2, subdivision (b): Respondent failed to re-submit the Corner
22 Report to the County Surveyor within the required sixty days, as more fully set forth in
23 paragraphs 30 to 33, above.

24 b) Section 8759, subdivision (a)(3): Respondent failed to include his license number on
25 the contract with the Verduzcos.

26 c) Section 8759, subdivision (a)(5): Respondent's contract with the Verduzcos failed to
27 describe the procedure for any party to terminate the contract.

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1 VARGAS PROPERTY – GLENALBYN DRIVE

2 35. On or about April 1, 2004, Respondent contracted with Manual Vargas to prepare an
3 updated soils and geologic reports for the proposed construction of two new homes on Lots 3 and
4 4 of Tract 9303 on Glenalbyn Drive in Mt. Washington, California. Nunez Engineering had
5 previously completed soils and geological reports on both of these lots. The total contract price
6 was \$1,600.00 and Mr. Vargas paid Respondent an \$800.00 retainer to begin work on the project.

7 36. Mr. Vargas sent Respondent a written inquiry as to the status of the soil and
8 geological report on or about June 23, 2004. Respondent did not provide the soil and geological
9 report.

10 37. On or about September 1, 2004, Mr. Vargas demanded, via certified mail, a refund
11 for his retainer fees since Respondent had not completed the updated soils and geologic report.
12 Mr. Vargas did not receive his \$800.00 refund until January 2005.

13 SIXTH CAUSE FOR DISCIPLINE

14 (Incompetence)

15 38. Respondent is subject to disciplinary action under section 6775, subdivision (c), of
16 the Code in that Respondent was incompetent and lacked the requisite knowledge and skill to
17 discharge his duties. The circumstances are as follows:

18 a) Respondent failed to complete and provide the updated soils and geological report
19 within a reasonably professional time as more fully set forth in paragraphs 35 to 37, above.

20 SEVENTH CAUSE FOR DISCIPLINE

21 (Breach and/or Violation of Contract)

22 39. Respondent is subject to disciplinary action under section 6775, subdivision (d), of
23 the Code in that Respondent was in breach and/or violation of the contract to provide professional
24 engineering services for the Vargas Project due to his nonperformance and abandonment of the
25 work as more fully set forth in paragraphs 35 to 37, above.

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1 EIGHTH CAUSE FOR DISCIPLINE

2 (Violations of Provisions of Act)

3 40. Respondent is subject to disciplinary action under section 6775, subdivision (h), in
4 that he violated provisions of the Professional Engineers Act (§§ 6700, et seq.) and laws relating
5 to the practice of professional engineering. The circumstances are as follows:

6 a) Section 6749, subdivision (a)(3): Respondent failed to include his license number on
7 the contact with Mr. Vargas.

8 b) Section 6749, subdivision (a)(5): Respondent's contract with Mr. Vargas failed to
9 describe the procedure for any party to terminate the contract.

10 ACOSTA PROJECT – FARQUHAR STREET

11 41. In or about April 2008, Respondent contracted with Frank Acosta to prepare a
12 grading plan for Mr. Acosta and his wife Barbara Acosta's property, on Lots 37 and 38 of Tract
13 No. 10447 on 4861 East Farquhar Street in the City of Los Angeles, California ("Acosta
14 project"). The contract work was for \$5,200.00, and the Acostas paid \$2,700 on or about April
15 23, 2008.

16 42. The scope of work in the April 2008 contract specifically stated that Respondent
17 would prepare a plan for the two lots "to be based on the updated soils and geology reports,
18 topographic survey maps and on the building plans received . . . from [architect] Phil Bennett.
19 Our plans will include the design details of the retaining walls for the two, proposed dwellings,
20 drainage structures as well as grading notes and earth work calculations." Respondent also
21 agreed to "[u]pdate the soils and geology reports to provide the seismic factors required by the
22 new 2008 California Building Code and the 2007 Los Angeles City Amendments which will also
23 be needed by the Design Engineer for the houses." The contract provided that "[t]he work will
24 start within 1 to 2 weeks and the plans will be completed within 3 weeks thereafter."

25 43. Respondent prepared a report entitled "Soils and Geology Investigation Report for
26 Two Proposed Dwellings, Lot [sic] 37 and 38, Tract No. 10447, 4857 and 4861 Farquhar Street,
27 Los Angeles, California." The soils report was dated August 14, 2008.

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1 44. On or about September 19, 2008, Respondent prepared a new written proposal for a
2 \$4,600.00 in work. This new proposal was not signed by either Mr. or Mrs. Acosta. This
3 proposal concerned Lot 39 of Tract 10447, and it provided that Respondent would "[c]omplete
4 soils and geological engineering reports for the design and construction of the proposed
5 improvements. The investigation will be based on a field exploration by Charles Schroeter the
6 new geologist to obtain data about the underlying geological materials. Laboratory testing on the
7 samples was performed and their results will be used in engineering analysis. The resulting
8 conclusions and recommendations regarding bearing capacity, gross stability, surficial [*sic*]
9 stability, lateral earth pressures, chemical tests and other factors as required by the City will be
10 included in the report. The plot plan in the soils and geologic reports will be based on the new
11 building design to be provided by Mr. Bennett. . . . [¶] . . . Prepare a grading plan to be based on
12 the soils and geology reports, topographic survey maps and on building plans to be provided by . .
13 . Bennett. Our plans will include the design details of the retaining walls for the proposed
14 dwelling, drainage structures as well as grading notes and earth work calculations. . . ."

15 45. On or about November 24, 2008, Respondent prepared a subsequent written proposal
16 stating it was submitted to Mr. Acosta and Flavio Olivas, but which was not signed by the
17 Acostas. This proposal concerned Lots 18, 37 and 38 of Tract No. 10447, which encompasses
18 4857 and 4861 Farquhar Street, and provided that the proposed work would cost \$3,600.00. The
19 proposal provided that Respondent would "[p]erform a complete topographic survey of Farquhar
20 Street from the existing manhole that's about 40 feet southerly of Olivas's Lot 18 to a point about
21 20 feet northwesterly of Acosta's Lot 37. With the survey map showing the three lots discuss the
22 length of the line required with the City person that makes these decisions. Prepare the sewer
23 map to City specifications and submit it for review. Pay review fees to be refunded plus 20
24 percent handling fee. [¶] Provide copies of sewer map to both clients for inclusion with plans or
25 submittal to plan reviewers."

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1 46. Respondent prepared a supplemental soils report described in a January 27, 2009
2 "Letter of Transmittal" as "Supplemental Soils Report (1 Set of Grading Plans and
3 Calculations)." This supplemental report was dated January 26, 2009, and it stated that it
4 provided supplemental information in response to a City Department of Building and Safety
5 correction letter dated October 15, 2008.

6 47. On or about March 12, 2009, the Department of Building and Safety (Department) of
7 the City of Los Angeles wrote a letter addressed to Mr. Acosta and copied to Respondent stating
8 that multiple reports, including Respondent's August 14, 2008 soils report and January 26, 2009
9 soils response report, did not provide adequate information for the Department to determine the
10 stability or safety of the proposed development. The Department ordered the geologist and soil
11 engineer to prepare a report containing specified corrections in the form of an itemized response,
12 and recommended "that once all correction items have been addressed in a response report, to
13 contact the report review engineer and/or geologist to schedule a verification appointment to
14 demonstrate compliance with all the corrections."

15 48. On or about May 7, 2009, in response to an e-mail sent by Sergio Rosas on behalf of
16 the Acostas, City Chief of Grading Division Dana Prevost e-mailed Mr. Rosas that the letter and
17 reports by Respondent, geologist Charles Schroeter and his predecessor, geologist C.A. Richards,
18 did not correct the problems discussed in the City's March 12, 2009 letter, and in fact the new
19 geology report shows a different geologic condition than shown in prior reports, and thus requires
20 that additional testing and analysis be performed. City Grading Division Chief Prevost further e-
21 mailed that if geologist Schroeter "continues to believe that the geology as shown in his reports is
22 correct, then [Respondent] will need to do additional testing and analysis." Prevost further e-
23 mailed that it is not acceptable for Respondent to ignore the geologist's report.

24 49. On or about June 2, 2009, Mrs. Acosta e-mailed Respondent to request him both to
25 stop all work on Lots 37, 38 and 39, and to return all information to Acosta Enterprises, Inc.

26 50. On or about June 29, 2009, Respondent wrote to Mr. Acosta that upon his remittal of
27 the \$2,500 due on the April 2008 contract, Respondent would mail the supplemental soils and
28 geology reports.

51. On or about July 23, 2009, Respondent wrote to Mr. Acosta in response to the Department's March 12, 2009 letter. Citing the geologist Charles Schroeter's April 3, 2009 letter to Respondent, Respondent wrote that no additional soils samples, residual shear tests or calculations for out dipping bedrock surcharge are necessary. Respondent further wrote that since the garage retaining walls are higher than 12 feet, they need to be designed for the seismic pressure calculated by the Mononabe Okabe equations that give active soil pressure three to three and a half times higher than those obtained by the static Rankine equations. Respondent stated that he presented these seismic or pseudostatic lateral pressures in his supplemental soil report dated January 26, 2009.

NINTH CAUSE FOR DISCIPLINE

(Incompetence and/or Negligence)

52. Respondent is subject to disciplinary action under section 6775, subdivision (c), of the Code in that Respondent failed to use the care ordinarily exercised in like cases by a duly licensed professional engineer, or in the alternative, lacked the requisite knowledge and skill to discharge his duties. Respondent failed to meet the standard of care in regards to topography surveys, boundary maps, grading plans, and soils and geology reports he was hired to prepare for Lots 37 through 39. Respondent did not develop and provide the pertinent site information to the City in a timely manner and in compliance with the accepted standard of practice in geotechnical engineering. Complainant refers to and by this reference incorporates the allegations set forth in paragraphs 41 through 51, above, as though set forth fully. The circumstances are as follows:

a) In connection with Respondent's site investigation, he excavated two three-foot deep test pits in March 1988. The log of Pit #1 indicates that siltstone bedrock was encountered at a depth of two feet below the surface, and that only one sample was extracted from the native soils at a depth of one foot below the surface. Respondent did not provide an explanation for the asterisks under the column "Tube" in his soils report dated August 14, 2008. The report also did not indicate how Respondent obtained the number of Blows, the Pit #2 log is deficient in explaining how the samples were extracted, and the description under the heading "EARTH

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1 MATERIALS" on page 4 of the report differs from the descriptions of the material
2 purportedly encountered in the logs.

3 b) Plate 4, which is entitled "CROSS SECTION A-A," and which is attached as part of
4 the appendix to Respondent's August 14, 2008 soils report, shows vertical cuts in excess of 15
5 feet at the structure's location, and tests on samples obtained from one foot and one and a half
6 feet below the surface have no significance in determining the stability and safety of the depicted
7 cut configurations.

8 c) Respondent's report did not provide critical information related to the preparation of
9 the bedrock samples for tests shown on plate 12, attached as part of the appendix to Respondent's
10 August 14, 2008 soils report.

11 d) Respondent did not provide appropriate slope stability analyses for determining the
12 safety of cuts made in stratified rock formations with nonlinear angle of friction as present at the
13 site.

14 e) Respondent's supplemental report dated January 26, 2009 did not correct the errors
15 and omissions from his report dated August 14, 2008.

16 TENTH CAUSE FOR DISCIPLINE

17 (Violations of Provisions of Act)

18 53. Respondent is subject to disciplinary action under Code section 6775, subdivision (h),
19 in that he violated provisions of the Professional Engineers Act (§ 6700 et seq.) and laws relating
20 to the practice of professional engineering. The circumstances are as follows:

21 a) Section 6749, subdivision (a)(3): Respondent failed to include his license number on
22 the contract with Mr. Acosta.

23 b) Section 6749, subdivision (a)(4): Respondent's contract with Mr. Acosta failed
24 include a provision to accommodate additional services.

25 c) Section 6749, subdivision (a)(5): Respondent's contract with Mr. Acosta failed to
26 describe the procedure to terminate the contract.

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GARCIA PROJECT – EVERGREEN DRIVE

54. In early November 2008, Santos Garcia contacted Respondent to obtain a quote on a six-foot retaining wall that Garcia wanted installed in his back yard of his home located at 369 Evergreen Drive, Brea, California 92821, and legally described as Lot 260, Tract No. 4802, APN 304-022-17. Garcia also wanted to install stairs.

55. On or about November 12, 2008, Respondent submitted a written proposal to Garcia for the following three services to be performed by Respondent: (1) a partial topographic survey behind Garcia's home to locate setbacks and obtain elevations; (2) a soils engineering investigation for the design and construction of the proposed improvements, based on field exploration to inspect site conditions and obtain representative samples of earth materials; Respondent proposed to perform laboratory testing on the earth materials samples he obtained, and include in his report the resulting conclusions and recommendations regarding bearing capacity, lateral earth pressure and other factors as required; and (3) a construction plan for the retaining walls based on Respondent's topographic survey map, on his soils report and on an e-mailed site plan; Respondent proposed to include retaining wall design details, drainage structures, construction notes, earthwork calculation, and notes on the required general, grading, BMP (Best Management Practices) and SUSMP (Standard Urban Storm-water Mitigation Plans). The total proposal cost was \$3,600.00, and Garcia paid \$2,000.00 on or about November 16, 2008. Garcia did not sign the proposal.

56. Respondent prepared two reports, one entitled "Retaining Wall Structural Calculations" and dated December 5, 2008, and the second report entitled "Soils Investigation Report for Proposed Improvements" dated December 10, 2008. Both reports have job/account number NE8225. Instead of one retaining wall, Respondent's plans were for two walls. Also, the plans did not include the stairs that Garcia wanted, and they included additional grading and other expenses resulting in approximately \$12,000 in additional work.

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ELEVENTH CAUSE FOR DISCIPLINE

(Incompetence and/or Negligence)

57. Respondent is subject to disciplinary action under section 6775, subdivision (c), of the Code in that Respondent failed to use the care ordinarily exercised in like cases by a duly licensed professional engineer, or in the alternative, lacked the requisite knowledge and skill to discharge his duties. Respondent failed to meet the standard of care related to the design of a retaining wall for the project. Complainant refers to and by this reference incorporates the allegations set forth in paragraphs 54 through 56, above, as though set forth fully. The circumstances are as follows:

a) In the "LABORATORY TESTS" section on page 5 of Respondent's soils report dated December 10, 2008, Respondent failed to explain the relevance of "Standard Test Method for Consolidated Undrained Direct Sample Shear Testing of Cohesive Soils" to testing of sandstone bedrock encountered at the site, since sandstone bedrock is not soil.

b) In the "Bearing Capacity" section on page 6 of Respondent's report dated December 10, 2008, Respondent failed to show how sandstone bedrock's bearing capacity of 4000 psf was calculated from the laboratory test results.

c) In the "Seismic Coefficients" section on page 9 of Respondent's report dated December 10, 2008, Respondent failed to show the basis for his professional geotechnical engineering opinion that "Seismic coefficient analysis is not required for the design of retaining walls."

d) In Plate 4, Boring Log No. 1, Respondent failed to provide information under the heading "Blows," such as the driving weight, the height of the drop, and use of tubes to extract undisturbed samples from sandstone bedrock. Unless bedrock is heavily weathered, coring is used to extract samples from rock formations.

e) In Plate 7, Boring Log No. 4, Respondent failed to provide information under the heading "Blows," such as the driving weight, the height of the drop, and use of tubes to extract undisturbed samples from sandstone bedrock. Unless bedrock is heavily weathered, coring is used to extract samples from rock formations.

1 f) In Plate 12, Direct Shear Test Sample No. 4-2@3, Respondent failed to provide his
2 reasons for testing bedrock samples in accordance with testing procedures for soils.

3 g) Respondent failed to provide explanations for the following two discrepancies: (1)
4 the runs for the six-foot retaining wall were dated October 30, 2008, pre-dating the proposal and
5 setting forth a different job/account number, NE8211, than the subject soils report's account
6 number of NE8225; and (2) the run for the six-foot, eight-inch retaining wall has a different
7 job/account number NE8226 instead of the subject soils report account number NE8225.

8 TWELFTH CAUSE FOR DISCIPLINE

9 (Violations of Provisions of Act)

10 58. Respondent is subject to disciplinary action under Code section 6775, subdivision (h),
11 in that he violated provisions of the Professional Engineers Act (§ 6700 et seq.) and laws relating
12 to the practice of professional engineering. The circumstances are as follows:

13 a) Section 6749, subdivision (a)(3): Respondent failed to include his license number on
14 his written proposal submitted to Mr. Garcia.

15 b) Section 6749, subdivision (a)(4): Respondent's proposal failed include a provision to
16 accommodate additional services.

17 c) Section 6749, subdivision (a)(5): Respondent's proposal failed to describe the
18 procedure to terminate the contract.

19 BAJA PANORAMA PROJECT

20 59. In 1997, Respondent was hired to perform a boundary survey for property located at
21 12621 Baja Panorama in the Panorama or Crown Heights area of an unincorporated area of
22 Orange County. Respondent set monuments but did not timely make his set monuments of
23 record. Further, Respondent's monuments were not of the same character as those shown on
24 Respondent's 1997 plot plan.

25 60. In or about March 2010, the Board's Enforcement Unit received a complaint from the
26 Orange County Chapter of the Joint Professional Practices Committee regarding the Baja
27 Panorama property.

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1 61. On or about April 6, 2010, a representative of the Board's Enforcement Unit notified
2 Respondent in writing about the complaint, and requested a response from Respondent.

3 62. On or about May 10, 2010, the Board Enforcement Unit representative advised
4 Respondent that he had until June 8, 2010 to provide the Board with multiple documents,
5 including a copy of the Corner Record for the subject property, proof of submittal of the Corner
6 Record to Orange County, field notes and the written contract for the project.

7 63. A report dated June 29, 2010 was submitted, indicating that Respondent prepared the
8 Corner Record dated May 19, 2010 and field notes dated May 21, 2010.

9 64. Respondent's Corner Record contained errors, including incorrect language to
10 describe the monuments found.

11 65. The Record of Survey referenced by Respondent failed to show bearings or
12 dimensions for the subject property.

13 THIRTEENTH CAUSE FOR DISCIPLINE

14 (Incompetence and/or Negligence)

15 66. Respondent is subject to disciplinary action under section 8780, subdivisions (b) and
16 (d), of the Code in that Respondent failed to use the care ordinarily exercised in like cases by a
17 duly licensed civil engineer or land surveyor, or in the alternative, lacked the requisite knowledge
18 and skill to discharge his duties in performing a boundary survey on the Baja Panorama subject
19 property as follows. The circumstances are more fully set forth in paragraphs 60 through 66,
20 above.

21 a) Section 8762, subdivision (c): Respondent's failure to either file a record of survey
22 or corner record within the 90-day time frame required by subdivision (c) of section 8762, or
23 notify the county surveyor of the delay.

24 b) Sections 8762 and 8765: By setting monuments and finding monuments different in
25 character than shown a previously recorded survey, Respondent was required to file a Corner
26 Record.

27 i) Respondent found an iron pipe at the southeast corner of the property that does not
28 show up on prior surveys.

1 70. On or about December 16, 2010, the Orange County Chapter of the Joint Professional
2 Practices Committee (JPPC-OC) filed a complaint with the Board requesting the Board to
3 investigate the absence of a record of Respondent's monuments, after Respondent did not respond
4 to JPPC-OC's letters dated July 28, 2010 and September 10, 2010 informing Respondent that
5 there was no public record.

6 71. On or about January 7, 2011, Respondent prepared Corner Record No. 2010-2882 for
7 the subject property, and the County Surveyor received the corner record on or about January 10,
8 2011. The date of survey noted on this corner record was "08/29/07."

9 72. On or about January 19, 2011, a representative of the Board's Enforcement Unit
10 notified Respondent in writing about the complaint and requested a response from Respondent.

11 73. In a letter dated February 9, 2011 and with the notation "**SECOND CHECK**," the
12 Orange County Public Works notified Respondent that his Corner Record needed corrections as
13 indicated on the included check print, that Respondent needed to record data and measured data
14 for all lines as noted on the check print, and that he needed to include "[c]lear lines out of set
15 monument symbol." The Orange County Public Works also required Respondent either to
16 resubmit a corrected corner record within 60 days, or to submit a letter to the County Surveyor
17 stating the reasons for noncompliance.

18 74. On or about February 15, 2011, Respondent prepared a revised Corner Record No.
19 2010-2882 for the subject property. The date of survey noted on this corner record was "08-02-
20 10." The Corner Record is not filled out by the County Surveyor.

21 75. In a letter dated February 22, 2011, the Board Enforcement Unit representative
22 advised Respondent that he had until March 8, 2011 to provide the Board a written response. The
23 top of the letter warned Respondent in upper case that this was the "**SECOND AND FINAL**
24 **NOTICE**."

25 76. In a letter dated March 4, 2011, Respondent responded to the Board Enforcement
26 Unit's letter by sending a marked-up copy of unrecorded Record of Survey 2010-1143 date-
27 stamped "NOV 08 2010" and an unrecorded and undated copy of Record of Survey 2010-1143.

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77. Respondent subsequently, in a letter dated March 7, 2011, wrote to the Board Enforcement Unit representative to disregard what he sent with his March 4 letter and to consider a new revised map accompanying the March 7 letter.

78. Accompanying a second letter from Respondent dated March 7, 2011, sent to the Orange County Public Works Department, was a revised corner record.

SIXTEENTH CAUSE FOR DISCIPLINE

(Negligence)

79. Respondent is subject to disciplinary action under section 8780, subdivisions (b) and (d), of the Code in that Respondent failed to use the care ordinarily exercised in like cases by a duly licensed civil engineer or land surveyor to discharge his duties in performing a boundary survey on the Baja Panorama subject property as follows. The circumstances are more fully set forth in paragraphs 69 through 78, above.

a) Section 8762: Respondent's failure to either file a corner record within the 90-day time frame required by subdivision (c) of section 8762, or notify the county surveyor of the delay.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to File Timely Survey)

80. Respondent is subject to disciplinary action under sections 8780, subdivision (d) and 8762, subdivision (c) of the Code, and California Code of Regulations, title 16, section 464, subdivision (c), in that Respondent failed to file a survey within 90 days of setting monuments, as more fully set forth in paragraphs 70 and 79, above.

P R A Y E R

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Civil Engineer License Number C 16581, issued to Fernando Peralta Nunez.

2. Revoking or suspending Geotechnical Engineer License Number GE 649, issued to Fernando Peralta Nunez.

1 3. Ordering Fernando Peralta Nunez to pay the Board for Professional Engineers, Land
2 Surveyors, and Geologists the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Code section 125.3; and

4 4. Taking such other and further action as deemed necessary and proper.
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8 DATED: _____

7/12/2011

Original Signed

RICHARD B. MOORE, PLS

Executive Officer

Board for Professional Engineers, Land Surveyors,
and Geologists

Department of Consumer Affairs

State of California

Complainant

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